



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

JDB:NMA/JDG
F.#2004R02605

*271 Cadman Plaza East
Brooklyn, New York 11201*

June 29, 2009

By Hand Delivery & ECF

The Honorable Dora L. Irizarry
United States District Judge
United States District Court
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Dominick Dionisio
Criminal Docket No. 04-1068 (DLI)

Dear Judge Irizarry:

The government writes respectfully in response to the defendant's application to modify the conditions of his pretrial release by eliminating the home confinement and electronic monitoring provisions of his bond, which was filed by letter dated June 10, 2009. (See Docket No. 61 ("Def.'s Ltr.")). For the reasons that follow, the government respectfully submits that the defendant's application should be denied and that his pretrial supervision should continue to include both home confinement and electronic monitoring, and should be further modified to provide for a full and immediate financial disclosure by the defendant.

I. Background

The indictment in this case was filed on December 8, 2004 while the defendant, an associate of the Colombo organized crime family of La Cosa Nostra ("Colombo family"), was serving concurrent terms of imprisonment for his racketeering convictions in United States v. Dionisio, et al., 99 Cr. 589 (NG) and United States v. Califano, et al., 01 Cr. 56 (RR).¹ Following the

¹ Accordingly, the defendant is not only subject to pretrial supervision with respect to this case, but also post-confinement supervised release as a result of his prior

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defendant's release from prison after his completion of these sentences, the government requested that the defendant be detained prior to trial in this case, based on the defendant's danger to the community.² On January 3, 2008, the Hon. Steven M. Gold, United States Magistrate Judge, ordered that the defendant be released on a two million dollar bond, and that he be subject to home confinement and electronic monitoring. Over the last year the defendant's pretrial release conditions have been modified by the Court to allow him, with the advance approval of Pretrial Services, to leave his residence on occasion to attend to certain family and personal responsibilities. Significantly, the defendant's release conditions have also been modified to allow the defendant to leave his residence to work daily at a Brooklyn restaurant. The defendant has remained on electronic monitoring since his release in January 2008.

II. Argument

The defendant has been charged with serious crimes of violence, including an attempted double murder as well as violent robberies. The government will prove these charges at trial through the testimony of the defendant's criminal accomplices, as well as other evidence. In light of the nature of the charges, and the defendant's long-time association with the Colombo family, a violent criminal organization, the government respectfully submits that he is a danger to the community. Accordingly, the government respectfully submits that the defendant's application to remove the home confinement and electronic monitoring conditions of his pretrial release be denied.

A. Legal Standard

Under the Bail Reform Act, Title 18, United States Code, Section 3141, et seq., the factors to be considered in determining whether there are conditions that will reasonably assure the appearance of the person as required and the safety of any other person and the community, include (1) the nature and

convictions.

² The government requested a permanent order of detention by letter dated December 31, 2007. (See Docket No. 25). The government respectfully incorporates that letter, which is attached, by reference.

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circumstances of the crimes charged; (2) the history and characteristics of the defendant; (3) the seriousness of the danger posed by the defendant's release; and (4) the evidence of the defendant's guilt. See 18 U.S.C. § 3142(g). Each of these factors favor - at a minimum - continuing the defendant's current bond conditions requiring home confinement and electronic monitoring with strict pretrial supervision. The government respectfully submits that there are no other conditions of release short of pretrial detention sufficient to ensure the safety of the community.

B. Organized Crime Defendants

Courts in the Second Circuit have repeatedly considered the issue of pretrial detention of organized crime defendants. See, e.g., United States v. Cirillo, Cr. No. 05-212 (SLT), slip op. (E.D.N.Y. 2005) (Genovese family acting bosses Dominick Cirillo and Lawrence Dentico, as well as defendant Anthony Antico, detained as dangers to the community), aff'd, 149 Fed. Appx. 40 (2d Cir. 2005); United States v. Gotti, 219 F. Supp. 2d 296, 299-300 (E.D.N.Y. 2002) (Gambino family acting boss Peter Gotti detained as danger to the community), aff'd, United States v. Ciccone, 312 F.3d 535, 543 (2d Cir. 2002); United States v. Agnello, 101 F. Supp. 2d 108, 116 (E.D.N.Y. 2000) (Gambino family captain Carmine Agnello detained as danger to the community); United States v. Defede, 7 F. Supp. 2d 390, 395-96 (S.D.N.Y. 1998) (Luchese family acting boss Joseph Defede detained as danger to the community); United States v. Salerno, 631 F. Supp. 1364, 1375 (S.D.N.Y. 1986) (Genovese acting boss and captain detained as danger to the community), order vacated, 794 F.2d 64 (2d Cir.), order reinstated, 829 F.2d 345 (2d Cir. 1987).

Together, these cases stand for the following propositions: (1) leaders of and participants in a violent organized criminal enterprise are dangerous due to the nature of their relationship with the enterprise; (2) organized crime defendants also often constitute a danger to the community due to the high likelihood that they will continue to commit crimes if released on bail; and (3) elaborate bail packages involving home detention and electronic monitoring are often insufficient safeguards to protect the community against dangerous defendants, including organized crime defendants. Given this precedential landscape, as well as the nature and circumstances of the offense charged and the defendant's demonstrated willingness to commit violent crimes on behalf of the Colombo family, the government submits that removing the defendant's home confinement and

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electronic monitoring conditions would be inappropriate in light of the factors set forth in Section 3142.

C. Home Confinement and Electronic Monitoring
of the Defendant Should Continue

The nature, circumstances and strength of the charges at issue, as well as the history and characteristics of the defendant, all favor continuation of the defendant's current restrictive release conditions.

1. Nature and Circumstances of the Offense Charged

First, the charges favor continuing the current conditions of the bond or as an alternative, pretrial detention. The defendant is charged with crimes of violence under the relevant provisions of the Bail Reform Act. See Ciccione, 312 F.3d at 542 (citing 18 U.S.C. §§ 3156(a)(4)(A), (B)) (Bail Reform Act defines a "crime of violence" as an offense that has as one of its elements the "attempted use, or threatened use of physical force against the person or property of another," or "any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense"); United States v. Chimurenga, 760 F.2d 400, 404 (2d Cir. 1985) (conspiracy to commit a crime of violence is a crime of violence for purposes of the Bail Reform Act). Specifically, the defendant is charged with racketeering conspiracy, which includes predicate acts of attempted murder and multiple robbery conspiracies.

Although the defendant derides the charges against him as the allegations of one or two cooperating witnesses, these serious charges are supported by not just the testimony of cooperating witnesses, but also the testimony of credible eyewitnesses, consensual recordings, and other evidence. Evidence at trial will show that the defendant was a loyal associate of the powerful Colombo family captain (and later underboss) William "Wild Bill" Cutolo during the internecine struggle known as the "Colombo War," which was waged by two rival

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factions of the Colombo family during the early-to-mid 1990s.³ Evidence will further show that, in November 1991, in broad daylight on a busy street, the defendant and another criminal associate shot at two individuals associated with a rival Colombo faction. Not only was one of those individuals wounded, but other innocent passers-by on the street were also injured.

The defendant is also charged with other serious acts of violence. The government will prove that the defendant robbed a Brooklyn yeshiva worker in May 1991 by hitting him from behind and forcibly taking a bag from his person containing the yeshiva's deposits for the day. In another charged incident between August 1998 and May 1999, the defendant, armed with loaded automatic firearms and wearing a bullet proof vest, robbed marijuana dealers, so that he and other Colombo members and associates could profit from the illegal drug dealing. The defendant was later captured on a consensual recording discussing the robbery.

2. History and Characteristics of the Defendant

The defendant is a longstanding Colombo family associate, whose crimes on behalf of the Colombo family span at least a decade. The defendant has sustained two prior racketeering convictions, which included predicate acts of loansharking, securities fraud, money-laundering and drug trafficking. These convictions resulted in lengthy prison sentences.

Since his release on supervision, the defendant asserts that he has complied with his release conditions, which have permitted him to leave his home for work, to run personal errands, to attend church and to visit with family on certain approved occasions. However, recent surveillance and source information indicates that the defendant is abusing the terms of his release and that, in his purported employment, the defendant does not actually work, but uses the job as a pretext to thwart his stringent release conditions. For example, law enforcement surveillance has found the defendant either at his place of employment, a Brooklyn restaurant, but not working, or leaving

³ The proffer of facts set forth herein does not purport to provide a complete statement of the facts and evidence of which the government is aware or that the government will seek to introduce at trial.

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his place of employment in vehicles with different individuals. Additionally, Pretrial Services has indicated that other than letters from the restaurant's owner, it has received no information to corroborate that the defendant is actually employed, including pay checks, paycheck stubs or tax forms for the defendant.

3. Evidence of the Defendant's Guilt

At trial, the government will prove the charges in the indictment through, among other evidence, the testimony of cooperating witnesses, eyewitnesses, consensual recordings, and documentary evidence, including medical records. The defendant's allegation that the government's case relies solely on the testimony of cooperating witnesses who are "less than stellar," (Def.'s Ltr. at 2), is belied by the fact that juries sitting in Eastern District of New York have convicted other Colombo family members and associates based upon the testimony of these witnesses. In United States v. DeMartino, et al., 03 Cr. 285 (RJD), both Vincent DeMartino and Giovanni Floridia were convicted of conspiracy to commit murder in-aid-of racketeering, among other charges, based upon the testimony of one cooperating witness -- Joseph Campanella. In United States v. Persico, et al., 04 Cr. 911 (SJ), Giovanni Floridia was the sole cooperating witness who implicated trial defendant Michael Spataro in the conspiracy to murder Joseph Campanella; a jury convicted Spataro of conspiracy to commit murder in-aid-of racketeering.

Moreover, the defendant's specific efforts to impugn the credibility of government witnesses is unavailing. The defendant misleadingly asserts that Joseph Campanella "continued to commit crimes for the Colombo family . . . by threatening a witness" when he "was supposed to be truthfully 'proffering' to the government." (Def.'s Ltr. at 3). The defendant's assertion is based on Campanella's own admissions that he obstructed a grand jury investigation into his criminal activities before he was arrested in November 2002 on racketeering charges, and before he entered into a cooperation agreement with the government.⁴ In addition, the defendant obfuscates the substance of Campanella's

⁴ After he was shot by a fellow Colombo family member and associate in July 2001, Campanella participated in a few secret meetings with the government in Fall 2001 to explore cooperation. He did not resume meeting with the government until after he was indicted in Fall 2002.

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prior testimony about the defendant's role in the charged double murder attempt. The defendant notes that Campanella has testified that he is the sole source of the evidence about the defendant's involvement in the 1991 attempted double murder, that Campanella (and not the defendant) was the person who shot the individual who was wounded during the attempt, and that Campanella was not sure whether the other shooting victim was in the car Campanella was shooting at. (See Def.'s Ltr. at 3). The defendant omits Campanella's most pertinent testimony, that the defendant shot into the car with him.⁵

The defendant also claims that the Honorable Joanna Seybert, the United States District Judge who presided over the 2007 retrial of Colombo family acting boss Alphonse Persico and underboss John DeRoss, determined that government witness Giovanni Floridia had committed perjury during that trial, based on a comment made by the Judge prior to jury instructions in that case. (See Def.'s Ltr. at 3-4). His assertion is meritless. Judge Seybert rejected similar arguments made by defense counsel in post-trial briefing in that case. In fact, the court specifically credited Floridia's testimony for purposes of denying the defendants' motions for a new trial. (See Mem. and Order dated Nov. 24, 2008 in United States v. Alphonse Persico and John DeRoss, 04 Cr. 911 (SJ) (Docket No. 714) at 9 (crediting Floridia's testimony implicating DeRoss in the murder of William Cutolo)). Accordingly, the defendant's argument that the quality of the evidence against him - which will include the testimony of

⁵ The defendant's further claim that it is "interesting[]" that Campanella agreed to waive the statute of limitations with respect to his guilty plea to a conspiracy to murder in-aid-of racketeering charge, pursuant to 18 U.S.C. § 1959, stemming from the 1991 attempted double murder, in light of the fact that Dionisio has been charged with the same conduct, is also a red herring. The constitutional basis for the indictment in this case has been upheld by this Court, see United States v. Dionisio, 415 F. Supp. 2d 191 (E.D.N.Y. 2006, as well as the Second Circuit. (See United States v. Dionisio, 503 F.3d 78 (2d Cir. 2007), cert. denied, Dionisio v. United States, 129 S. Ct. 158, 172 L. Ed. 2d 41 (2008). Notably, the defendant has not been charged with a charge under Section 1959, but rather a different charge, to wit: racketeering conspiracy pursuant to 18 U.S.C. § 1962(d), including a predicate act charging the conspiracy to murder and the attempted double murder of the rival Colombo faction members.

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his criminal accomplices in the charged crimes - is weak should be rejected.

D. The Defendant Is a Flight Risk

As the trial process advances, Dionisio will increasingly constitute a risk of flight. On the current charges, Dionisio faces up to 20 years in prison and under the advisory Guidelines, approximately 210 to 240 months in prison. See United States v. Dodge, 846 F. Supp. 181, 184-85 (D. Conn. 1994) (possibility of a "severe sentence" heightens the risk of flight).

III. Conclusion

For the reasons set forth above, the government respectfully requests that the defendant's motion to modify the conditions of his pretrial release be denied, but that the defendant be required to provide a full and immediate financial disclosure.

Respectfully submitted,

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cc: James Froccaro, Esq. (by ECF)
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